

ED PENDLETON

IBLA 79-401

Decided February 13, 1980

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting in part oil and gas lease offers, N-20997 and N-20999.

Affirmed.

1. Mineral Leasing Act: Lands Subject To -- Oil and Gas Leases: Lands Subject To

Lands situated within the boundaries of incorporated cities, towns or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

APPEARANCES: Ed Pendleton, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ed Pendleton appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 6, 1979, rejecting, in part, his noncompetitive oil and gas lease offers N-20997 and N-20999. The offers were rejected as to the following lands: S 1/2 of sec. 24, secs. 25, 35, and 36, T. 22 S., R. 61 E., Mount Diablo meridian. The decision states that those lands "are located within the city limits of an incorporated city, town or village," and cites 43 CFR 3101.1-1(a)(3) to support the rejection.

The identified regulation states that "[a]ll lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior * * * (a) Exceptions: * * * (3) Incorporated cities, towns, and villages." The regulation is based on the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), which, inter alia, excludes from leasing deposits of oil and gas in lands within incorporated cities, towns, and villages.

In his statement of reasons, appellant does not dispute the fact that the lands are within the limits of an incorporated city. Rather, he argues that a lease for the lands in question "could be issued by [BLM] with stipulations sufficient to protect the environment affected by any drilling activity that might occur on this land."

[1] While it is true that the Secretary of the Interior in administering the oil and gas leasing program may require protective stipulations before a lease is issued (see Questa Petroleum Co., 33 IBLA 116 (1977); 43 CFR 3109.2-1), that is not the situation before us. The statute and applicable regulations are clear; there is no authority under the Mineral Leasing Act, supra, to issue oil and gas leases within incorporated cities, towns, and villages. Hawthorn Oil Co., 37 IBLA 91 (1978). ^{1/} Inasmuch as we have confirmed that the lands in question fall within the incorporated city limits of Henderson, Nevada, the State Office properly rejected the oil and gas lease offer.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} In Hawthorn Oil Co., supra, we noted that the exclusionary language in the Mineral Leasing Act of 1920, supra, is virtually identical to language in section 3 of the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. § 352 (1978), excluding acquired lands within incorporated cities, towns, and villages from leasing. We further noted that the Department has consistently construed that language as precluding oil and gas leasing of acquired lands within incorporated cities, towns, and villages. Sallie B. Sanford, 23 IBLA 312 (1976); Bernard Silver, A-30873 (Nov. 28, 1967); Hugo Pyes, A-29875 (Feb. 19, 1964); Duncan Miller, A-29897 (Nov. 19, 1963); Robert Yocum, A-26570 (Dec. 24, 1952); cf. Tom H. Dowlen, A-27724 (Nov. 17, 1958).

